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IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
INSOLVENCY AND COMPANIES LIST

Nos. CR-2018-003659  
CR-2018-003697  
CR-2018-003655  
CR-2018-003699  
CR-2018-003656  
CR-2018-003695

Rolls Building  
Fetter Lane  
London EC4A 1NL

Wednesday, 2 May 2018

Before:

MR JUSTICE HILDYARD

IN THE MATTER OF **SCL GROUP LIMITED & OTHERS** (Company No. 05514098)

AND

IN THE MATTER OF **SCL ANALYTICS LIMITED** (Company No. 09838667)

AND

IN THE MATTER OF **SCL COMMERCIAL LIMITED** (Company No. 08840965)

AND

IN THE MATTER OF **SCL SOCIAL LIMITED** (Company No. 08410560)

AND

IN THE MATTER OF **SCL ELECTIONS LIMITED** (Company No. 08256225)

AND

IN THE MATTER OF **CAMBRIDGE ANALYTICA (UK) LIMITED** (Company No. 09375920)

AND

IN THE MATTER OF **THE INSOLVENCY ACT 1986**

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MR A. RICHARDSON (instructed by Tiger Law) appeared on behalf of the Applicant Companies.

MR M. WATSON-GANDY (instructed by Underwood LLP) appeared on behalf of the Proposed  
Joint Administrators.

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**PROCEEDINGS**

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(Transcript prepared from poor quality audio)

(Transcript prepared without the aid of documentation)

(3.54 p.m.)

MR JUSTICE HILDYARD: Yes, Mr Richardson?

MR RICHARDSON: My Lord, thank you. I am Adam Richardson, I am representing counsel for the companies. Of course, Mr Watson-Gandy, on my side, is the counsel for the proposed administrators. My Lord will now have been appraised of the witness statement which forms the, primarily, the largest chunk of evidence in this, in this application. Has my Lord had a chance to read both myself and Mr Watson-Gandy's witness, skeleton arguments?

MR JUSTICE HILDYARD: I, I have, yes. I have. I mean, obviously, in the time available, I have read it, but whether I have inwardly digested every detail may be a, a different matter.

When were the minutes of the meetings of the various companies signed?

MR RICHARDSON: Monday, 30 of this, April it will be, Monday, yes, this Monday.

MR JUSTICE HILDYARD: This Monday? And they do not state who was present in any case, beyond Mr Wheatland. Is he the only director who was present?

MR RICHARDSON: I believe so and, in some cases, the only director of that, that company. These took place in the United States, so it has been a lot of back and forth for counsel to, to pull this together, but it is my understanding----

MR JUSTICE HILDYARD: So sorry?

MR RICHARDSON: These took place in the United States, so it is my---- There has been a lot of back and forth to derive most of this information, but my understanding is that Mr Wheatland was present at those meetings.

MR JUSTICE HILDYARD: What are the quorum provisions? It is unusual to have a quorum of one.

MR RICHARDSON: Quite right, my Lord. I am afraid I, I do not have the articles to hand, so I cannot assist you in that regard.

MR JUSTICE HILDYARD: Right. Yes. And they all took place in the United States, did they?

MR RICHARDSON: That is my understanding, yes.

MR JUSTICE HILDYARD: And is Mr Wheatland based in the United States?

MR RICHARDSON: He is based in New York currently, yes.

MR JUSTICE HILDYARD: He gives his address in the witness statement as somewhere in St James's Gardens.

MR RICHARDSON: That is right. I believe he is---- I believe he lives in New York now, but is, is an Englishman by, by birth, so may be resident here also.

MR JUSTICE HILDYARD: Is what?

MR RICHARDSON: He is an Englishman by birth, so he may be resident here also.

MR JUSTICE HILDYARD: I see. And you ask for permission to give short notice. What is the normal notice? I ask that because I cannot remember. Is it one day before or what is it?

MR RICHARDSON: If I may ask my learned friend to assist at this point?

MR JUSTICE HILDYARD: Yes, of course.

MR WATSON-GANDY: It would be three, be three days.

MR JUSTICE HILDYARD: Three days. And is that quite usually, I mean, I have certainly done applications for administrations with very much more notice than three days.

MR WATSON-GANDY: My Lord, it very, very often, it, it is done on short notice. Usually, the nature of administration is such that it, it necessitates it.

MR JUSTICE HILDYARD: Yes. So it would not be unusual to----

MR WATSON-GANDY: It would not be unusual, my Lord.

MR JUSTICE HILDYARD: No.

MR WATSON-GANDY: In this, these circumstances, the people to whom the notice should be given would be to me, as administrators.

MR JUSTICE HILDYARD: Yes, to you and any floating charge-holders have been notified?

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: Yes. And there is no petitioner outstanding against any of these companies?

MR WATSON-GANDY: No, my Lord.

MR JUSTICE HILDYARD: Yes. I, I was not sure – you must take me through the evidence as you see fit, Mr Richardson, and Mr Watson-Gandy no doubt will supplement insofar as it is right for him from his perspective to do so – I was not sure whether the companies' inability to pay was because it had no resources or because, by reason of the intervention of, is it the ICO or IOC, I cannot remember, it simply had no idea whom it should pay?

MR RICHARDSON: I believe it is a combination of both, my Lord. The Information Commissioner's Office seized their financial data, so they, they were not appraised of a number of intercompany loans, but, by the same token, they were also unable to operate a large proportion of their business knowing whom they owed money to, when it was owed and how, but, equally, the bad publicity resulted in people preventing, no longer wanting to pay their bills as they fell due, they were difficult to be chased and, and worse still, to compound matters, people who had money on account, clients with money on account, started to demand that the balance be repaid to them. As was being reported in the press,

they no longer believed that the companies were, were able to deliver on what they have, what they assured them in, in contract.

MR JUSTICE HILDYARD: So it has book debts, but they are simply not performing?

MR RICHARDSON: Essentially, yes, my Lord.

MR JUSTICE HILDYARD: So on a, on a balance sheet basis, it may not be insolvent, but you say, on a day to day basis----

MR RICHARDSON: On a cashflow basis.

MR JUSTICE HILDYARD: -- on a cashflow basis it is----

MR RICHARDSON: Most certainly unable to, to meet its liabilities as they fall due.

MR JUSTICE HILDYARD: And you say, therefore, it, it satisfies at least one of the two limbs for insolvency, or likely insolvency, is that right?

MR RICHARDSON: Yes, my Lord.

MR JUSTICE HILDYARD: And take me to the evidence as to how the sudden dawning of this came before 30 April. I am, naturally, a little bit concerned about the urgency of the matter, lest I do not fully comprehend, since----

MR RICHARDSON: I can understand my Lord's reservations, and there nature of the documents, also drafted on a, a very quick basis, but I am afraid the directors fear that they are very close to trading insolvently, and, as a result of being unable to derive that information from their financial computers, they are even more concerned, them perhaps not being able to have a clear picture of their own finances.

MR JUSTICE HILDYARD: Have they shared that concern at any time with the ICO?

MR RICHARDSON: I am not instructed on that matter. I, I just do not know.

MR JUSTICE HILDYARD: Do you have a director in court?

MR RICHARDSON: No, my Lord.

MR JUSTICE HILDYARD: Because they are in the States?

MR RICHARDSON: Mr Wheatland is in the States. There are several other directors of different elements of companies, but no one is present.

MR JUSTICE HILDYARD: When did the ICO take these papers?

MR RICHARDSON: On 23 March, my Lord.

MR JUSTICE HILDYARD: Has it indicated when they are likely to be returned, or at least copies?

MR RICHARDSON: I am not privy to the information if it is. Other counsel has been instructed on the data protection matters.

MR JUSTICE HILDYARD: Do you know what sort of volume?

MR RICHARDSON: I believe all of their computers, which I believe to be a great number, as, of course, the company traded in digital property.

MR JUSTICE HILDYARD: One would still think that they would have access to their bank accounts and, and that sort of thing.

MR RICHARDSON: They, they must do, my Lord, but it would be more the transaction systems, knowing what is coming and what is going, what is recorded as interpersonal loans and what is not. The, the nature of the accounting is what was taken from them that stopped them having that clear picture.

MR JUSTICE HILDYARD: But the deposition---- I am not sure what you mean by interpersonal loans.

MR RICHARDSON: Sorry, intercompany loans, not, not interpersonal loans.

MR JUSTICE HILDYARD: Well, that may be the least of the worries. The question is, as regards creditors and debtors, would they not have some other records still as to that position?

MR RICHARDSON: It is my instructions that they do not.

MR JUSTICE HILDYARD: Everything, all the books and records have been taken?

MR RICHARDSON: This was a very large-scale operation that the ICO had very publicly executed and it is my understanding that, yes, as much data as they could possibly take from the premises. Everyone worked out of a common office. All of the separate companies worked out of the same common office and, as a result of that, they lost access to all of their accounting details as a result, and, of course, the bad press that went with that that affected the business in a way that they were unable to then understand.

MR JUSTICE HILDYARD: Yes. The possibility that the centre of gravity of this operation is in the United States appears to be supported by the fact that even the person who is primarily motivated in this is presently in the United States and believed to live there.

MR RICHARDSON: It is arguable, but he recently stepped into the breach, so to speak, as Alexander Nix, the previous director, resigned.

MR JUSTICE HILDYARD: When did he resign?

MR RICHARDSON: I believe he resigned in those board meetings or those board meetings accepted his resignation, so on the----

MR JUSTICE HILDYARD: Sorry, I had missed that. Is that minuted? So stupid of me. But that is minuted, is it?

MR RICHARDSON: It is, my Lord.

MR JUSTICE HILDYARD: The impression given by the minutes of the meeting is that it was desired to effect, as was possible, the administration by resolution of the directors, there being no winding up petition that was possible.

MR WATSON-GANDY: My Lord, the answer is, the answer is, in that respect, legally, yes, my Lord, that could, it can still be done on the papers.

MR JUSTICE HILDYARD: It seems to have been done on the papers.

MR WATSON-GANDY: My Lord, I think there is, there needs to be statutory declarations and forms filled out, and then lodged at this court.

MR JUSTICE HILDYARD: So they have resolved to do it but, when they mean “do it”, they mean “apply to court”?

MR WATSON-GANDY: My Lord, yes. There is a, there is a---- Whilst they could apply, they could apply on the papers and simply lodge it at the court, there are practical advantages in a court application. Amongst the authorities before you is a case called (inaudible) which concerned a----

MR JUSTICE HILDYARD: Sir Andrew Morritt’s decision, was it?

MR WATSON-GANDY: This was the Pravin(?), Pravin J decision. In essence, what it related to was an administration being declared invalid----

MR JUSTICE HILDYARD: Invalid.

MR WATSON-GANDY: -- simply on the basis that the wrong form had been used.

MR JUSTICE HILDYARD: Yes. I remember there used to be a spate of applications for retrospective validation of administrations that should be (inaudible) court----

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: -- for want of quorum or other---- At least the quorum position here appears frail.

MR WATSON-GANDY: Our, our concern is to, is to discover sometime down the line that there are some, there might be some defects which are curable in court procedures, but not on, not on----

MR JUSTICE HILDYARD: So your consent is predicated upon there being an absolutely irrefragable appointment by the court?

MR WATSON-GANDY: We would like, yes, we would like---- It would give us a great deal of comfort.

MR JUSTICE HILDYARD: Yes. The---- To go back to the minutes, they are a little curious in simply not identifying at all who was there. They are signed by Mr Wheatland. They do not say where anything takes place, or when. Mr Wheatland’s name is scribbled in, as it

were, as present. It is noted by him that, presumably, as Chairman, that he, presumably he was the chairman who is referred to, but absolutely no one else is mentioned at all.

MR RICHARDSON: The only other information I can give you, my Lord, is that a board meeting likewise was held of the Emerdata Limited board, which is the parent company.

MR JUSTICE HILDYARD: Where is Emerdata---- I could not find any details about Emerdata.

MR RICHARDSON: Emerdata does not feature in this application, though does exist as part of the, the structure of the companies.

MR JUSTICE HILDYARD: It is an ultimate holding company, is it?

MR RICHARDSON: It is the parent company for all of these lesser companies.

MR JUSTICE HILDYARD: And it is an English company?

MR RICHARDSON: That is right, my Lord.

MR JUSTICE HILDYARD: And its directors are? Do you know?

MR RICHARDSON: I am afraid I do not, my Lord.

MR JUSTICE HILDYARD: I interrupted you before you could explain properly what its relevance is.

MR RICHARDSON: Emerdata?

MR JUSTICE HILDYARD: Yes.

MR RICHARDSON: It is, the only thing I can expand on the minutes is that Emerdata also had a, had a board meeting, but that is all I can tell you.

MR JUSTICE HILDYARD: Let us have a look at its board meeting.

MR RICHARDSON: I do not know if it will be in these papers, my Lord, because they are not, it is not resolving anything with regard to the administration.

MR JUSTICE HILDYARD: I mean, it is not for the court necessarily to peer behind the curtain too much, but there is a slight fear about these minutes that they have just been signed in sequence and I think at least one mentioned Mr, Mr Oakes is mentioned at p.4, otherwise it is just Mr Wheatland I think, is it not?

MR WATSON-GANDY: My Lord, just to, just to assist the court, in relation to most, just to go, going through the list of companies, Group, the, the sole directors are Oakes and Mr Wheatland, Analytic, the sole director is Mr Wheatland, Commercial, the sole director is Mr Wheatland. There is, Elections, again, he is the sole director. Cambridge LLC, the, the director is Emerdata and USA, Mr Wheatland, again, is the sole director.

MR JUSTICE HILDYARD: So the guff at the beginning of, "Notice of the meeting being given to all those persons entitled to receive the same and with a quorum being present, we declare the meeting open", that is guff, is it?



MR RICHARDSON: I imagine it is just by template, my Lord. I cannot speak to how these minutes came to be signed by Mr, Mr Wheatland, but I imagine that is just the template by which they have always done their minutes.

MR JUSTICE HILDYARD: Right. Okay. And, in essence, you say that they are, there is a real prospect of being able to sell these companies?

MR RICHARDSON: Yes, my Lord, for----

MR JUSTICE HILDYARD: Their businesses, you mean?

MR RICHARDSON: Yes, my Lord, as going, as going concerns.

MR JUSTICE HILDYARD: And there was, there was mention of a sale yesterday or the day before, of one of them, an SCL one?

MR RICHARDSON: Yes, my Lord. SCL Insight, and I am afraid that, that that name still appears in my skeleton as the, the sale was very recent, as yesterday, SCL Insight was bought by Mr Oakes, I believe.

MR JUSTICE HILDYARD: Now, Mr Oakes, the other director?

MR RICHARDSON: Oakes, I believe, yes.

MR JUSTICE HILDYARD: And what did he buy, did he buy the business or did he buy the shares?

MR RICHARDSON: I, I am not sure, my Lord. I would mislead you to tell you an answer to that.

(After a pause) I am told there has been offers advanced for other purchases of the companies, likewise some for the assets, some for the company themselves, including their employees.

MR JUSTICE HILDYARD: For their business and undertakings?

MR RICHARDSON: Yes, my Lord.

MR JUSTICE HILDYARD: And what are the contras to the administration route? Who would complain and with what reason?

MR RICHARDSON: If one were to, to consider it on its basis, I imagine that the, the supervised moratorium would prevent immediate or particularly litigious creditors from making their claims, but, in the long run, they are more likely to be realised regardless.

MR JUSTICE HILDYARD: Yes. The position as regards the US, I do know whether they are New York or Delaware, companies which you seek an administration order in respect of----

MR RICHARDSON: Yes, my Lord.

MR JUSTICE HILDYARD: -- not easy to establish that their centre of main interest is here, is it?

MR RICHARDSON: I do not believe it is easy, but I do believe it, it is possible. They, they have a great association with what was essentially the trading company of the entire group, which

was SCL Elections Limited. In some cases, or, or in the case of---- For the sake of specificity, I will turn to my skeleton on the matter----

MR JUSTICE HILDYARD: I was struck by the fact that all, all their respective employees are all based in the United States.

MR RICHARDSON: That is right, my Lord. I believe they market the services of the, the, the UK company---- It is in Mr Wheatland's statement, I believe, with regards to how it operates. It is sort of an American representative office so to speak, but in name only.

MR JUSTICE HILDYARD: But it is right, is it not, that it only has to be established by reference to the individual company and the group affiliation is irrelevant?

MR RICHARDSON: Even looking at the, the individual company, my Lord, although established in Delaware, run out of an office in, in Arlington, Virginia, they still take all of their instructions and, and operations from the, from the UK. Simply having employees in another country is not enough to, to consider it as irrebuttable.

MR JUSTICE HILDYARD: But if you were a third party person dealing with the company, you would deal with employees in the United States, business undertaken in the United States, business undertaken in US dollars in the United States, what would you know about these messages from on high? You would not, would you not?

MR WATSON-GANDY: My Lord, I can, I can assist by dealing with the, dealing with the companies separately.

MR JUSTICE HILDYARD: Yes?

MR WATSON-GANDY: In relation to the one we, described as "USA", the, the third party who would be dealing with it is, is Elections, because it would be its sole, its sole customer. It is 100 per cent owned by Elections and its strategic management is, it comes from, comes from Elections, which is of course a UK company.

As regards LLC, its supplier is Elections, its assets are held at Elections' address.

Importantly, the operational management, which includes the, dealing with, dealing with the, the accounting function of receiving invoices and billing, comes, comes from, is provided from Elections at, in London. So, in terms of third parties dealing with, with the company, that would be, there, they would find themselves being invoiced from London and paying London.

MR JUSTICE HILDYARD: But would they know that? US dollar invoices?

MR WATSON-GANDY: Well, presumably there would be an address in London to, to respond to----

MR JUSTICE HILDYARD: When you say “presumably”, what do you mean?

MR WATSON-GANDY: One, one of the---- Since it, since it would be generated out of, out of London.

MR JUSTICE HILDYARD: You think they would send it from a London address rather than the Virginia address or whatever it may be?

MR WATSON-GANDY: Because otherwise it would need to---- If somebody was sending, sending a cheque, they would need to, it would need to be forwarded from Virginia to London, so it would----

MR JUSTICE HILDYARD: Well, no, because the bank account is in the United States.

MR WATSON-GANDY: My Lord, in, in relation to the---- That certainly would cover the, the payment of employees, but, as regards the outside, outside world----

MR JUSTICE HILDYARD: Have they got bank accounts in this jurisdiction?

MR WATSON-GANDY: I would defer to my learned friend on that.

MR RICHARDSON: It is not in my instructions either, my Lord. I have only been told of a US bank account.

MR JUSTICE HILDYARD: That is what I understood.

MR WATSON-GANDY: But as regards the, the management’s location, that would be the, the Elections office in London, so----

MR JUSTICE HILDYARD: I am a bit rusty, Mr Watson-Gandy, on the test for COMI, but my residual understanding is that it is really what an ordinary trade creditor would consider to be the place he was dealing with the company at.

MR WATSON-GANDY: My, my Lord, I think that, that, that is probably the most elegant summary of, summary of a lot of case law. It really is that, it really is that sort of test.

MR JUSTICE HILDYARD: Yes. So, so quite what the machinery for internal company direction is is irrelevant because they probably will not even know about it.

MR WATSON-GANDY: Well, my Lord, the answer, the answer to that is, is it is, it, it, it, it is irrelevant to the extent that third parties---- It is irrelevant to the extent that, how third parties deal with matters. If you are looking for a, for a---- If you are, if you are a third party trying to come to a decision or seek, seek payment or come to an arrangement, you are, the question is: “When you were trying to contact senior management, what, what external evidence do you have that the base is either New York, Delaware or Virginia or, or London?” And from our, from our standpoint, if you were trying to contact someone to, to pay your bill, you would have had to contact, contact London, because that is where the, where the----

MR JUSTICE HILDYARD: Well, I do not think there is any evidence of that. The evidence at the moment is that the relevant and only director appears to be based in America, the only staff appear to be based in America, the currency of account appears to be US dollars and the place where this supply is is the United States. All that I have got to hang my hat on with respect to COMI for the purpose of Model Law, which is going to be the relevant thing since it is not the regulations as I understand it, though I think it is fair to say that the same approach to COMI is adopted by both (inaudible)----

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: -- is that, behind the scenes, as it were, the direction is taken by London, by persons unknown, because the only director is in the United States.

MR WATSON-GANDY: My Lord----

MR JUSTICE HILDYARD: It all seems a bit curious.

MR RICHARDSON: If I may----

MR JUSTICE HILDYARD: Yes?

MR RICHARDSON: With regard to Cambridge Analytica LLC, the only director previously was based in London, being Mr Nix. It is now, of course, Mr Wheatland, but if, if that pivotal bit of information does, in my Lord's view, shift the COMI from London to, to America, then I, I suppose so be that, but----

MR JUSTICE HILDYARD: It is, it is a very fair point. Mr, Mr Nix was based here, was he?

MR RICHARDSON: Yes, my Lord. Mr Nix is London-based.

MR JUSTICE HILDYARD: And was what?

MR RICHARDSON: And was the director of a great many of these companies, if, if not all of them, until his resignation, very public resignation.

MR JUSTICE HILDYARD: Yes. Yes. At any rate, especially as regards the US companies, one has to be a wee bit careful, because I have to be reasonably satisfied that the purpose of administration can be achieved and, for that purpose, I have to be reasonably satisfied, I think, that the United States would, pursuant to Chapter 15, recognise the appointment, and it would only do that if it is itself satisfied, or at least not dissatisfied, as to the COMI.

MR RICHARDSON: Yes, my Lord, but, of course, that, that, that is difficult to predict, having just gone through what, what the USA would determine as well as what my Lord may determine.

MR JUSTICE HILDYARD: It may be difficult, but then, in reality, the difficulty is here. I have got to be reasonably---- Have I not got to think it reasonably likely that the US court will grant Chapter 15 recognition of an order made here, the premise of that order being, it being a US

company, that the English court was satisfied on sufficient ground that the COMI of that US company was England? That is what I have got to be satisfied about, is it not?

MR RICHARDSON: Yes, my Lord, but if my Lord is satisfied I see no reason why a US court should second-guess my Lord.

MR JUSTICE HILDYARD: Well, there are two answers to that. One is that increases the burden on me not to be satisfied unduly easily. Two is it is not beyond the wit of the US court, if it really cannot see any satisfactory basis for a connection here, just to say no, it will not give recognition.

MR RICHARDSON: Yes, my Lord, I, I suppose that would be a matter for the US courts. I cannot possibly speak to it, and what may happen in the future----

MR JUSTICE HILDYARD: Well, you have to speak to it, because that is the test before me, I am afraid.

MR RICHARDSON: Well, then, then, my Lord, I, I just revert to the facts that I told you about the proximity to SCL Elections and, and Mr Nix. This is the reality.

MR JUSTICE HILDYARD: Well, you are quite right, you can only tell me what you can tell me, and that is as much as you can tell me. Mr Watson-Gandy, you were going to speak?

MR WATSON-GANDY: My---- If you allow me. The only other factor, it would be that, as to, as to whether the US court would treat these as secondary proceedings if they, if they disagreed as regards COMI, since there is an establishment in the UK in respect of both----

MR JUSTICE HILDYARD: They might do.

MR WATSON-GANDY: It is---- Of course, COMI is not the only jurisdictional basis that you, that you have. If you are against my learned friend----

MR JUSTICE HILDYARD: Is it not? Because do I not have to be satisfied that it is a company and, for that purpose, do I not have to be satisfied that limb 3 is, of the new definition, is satisfied?

MR WATSON-GANDY: My Lord, what I was, what I had in, had in mind was the alternative jurisdiction that was, that was raised in *Latreethers*(?), which gave, which is a common law jurisdiction----

MR JUSTICE HILDYARD: I thought all that had been blown out of the water rather. I mean, I am perfectly happy to investigate it, but----

MR WATSON-GANDY: It is, it is----

MR JUSTICE HILDYARD: -- common law, common law----

MR WATSON-GANDY: It is a third line of defence, it is a third line----

MR JUSTICE HILDYARD: -- common law cross border has had difficult days (inaudible) has it, is it not?

MR WATSON-GANDY: My Lord, I, I---- It was not our primary, primary ground, but it is a, it is, to my understanding, a----

MR JUSTICE HILDYARD: I mean, where there is an express statutory provision----

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: -- and, before that statutory provision, I could not possibly have done this without a request under 426, which the United States is not a party to, the definition is then brought in, very broad, but not endless.

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: It defines “company” either as a UK company or a non-Denmark EEA company or a COMI company.

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: And unless you are a COMI company, or satisfy one of the other two grounds which are not available here, you are not a company. If you are not a company, I cannot make an administration order----

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: -- and then to say the common law says, “Oh well, who cares about the statute, nevertheless we are going to recognise this company under our common law” seems far-fetched.

MR WATSON-GANDY: Well, my Lord, it is, it is, it is recognised as a, as an aid for the winding, the winding up.

MR JUSTICE HILDYARD: There is no---- What, the winding up in the States, you mean?

MR WATSON-GANDY: If COMI was established in the States, as an aid to the winding up in the States, yes.

MR JUSTICE HILDYARD: Yes, but that is not what is sought, is it?

MR WATSON-GANDY: My Lord, if, if it, if it assists, we have got a copy of *Latreethers* at, at divider, divider 5, but I suspect, from your Lordship’s commons, you are familiar with the, with the decision.

MR JUSTICE HILDYARD: All I remember is that there has been a bit of a C-change, not necessarily welcomed by all, since *Rubin*----

MR WATSON-GANDY: My Lord.

MR JUSTICE HILDYARD: -- and *Latreethers* was in the last century.

MR WATSON-GANDY: Well, it was, it was, I think it was before, I think it was after----

MR JUSTICE HILDYARD: 1999.

MR WATSON-GANDY: Yes, my Lord, something like that. (inaudible) of course your Lordship has got to what---- Your Lordship, your Lordship is right. I was----

MR JUSTICE HILDYARD: Yes.

MR WATSON-GANDY: -- I was forgetting we had----

MR JUSTICE HILDYARD: Yes, we have bundled into the 21<sup>st</sup> Century.

MR WATSON-GANDY: My Lord, that---- The---- Certainly, the, the sort of the major texts still refer to this as, refer to this as the sort of third line of, line of jurisdiction.

MR JUSTICE HILDYARD: Who does?

MR WATSON-GANDY: The, the, for example, **Berry on Corporate Insolvency**.

MR JUSTICE HILDYARD: Berry?

MR WATSON-GANDY: Berry.

MR JUSTICE HILDYARD: I am not sure I know that one.

MR WATSON-GANDY: My Lord, I----

MR JUSTICE HILDYARD: Is there anybody in court who is not intimately connected with this? My, my judicial assistant is not, but he is a man of the utmost reliability. Is there anyone who is not involved in the case directly?

MR LEWISON: We are here on a different application, my Lord.

MR JUSTICE HILDYARD: Counsel?

MR LEWISON: Yes.

MR JUSTICE HILDYARD: Is it Mr Lewison?

MR LEWISON: It is.

MR JUSTICE HILDYARD: And your client?

MR LEWISON: Yes, my instructing solicitor.

MR JUSTICE HILDYARD: Your instructing solicitor and, and your client?

MR LEWISON: No, my client is not here.

MR JUSTICE HILDYARD: No. So no one else? All I have in mind is I am, although privacy was not requested, if I were to consider this overnight, I would not want it to be, you to be inconvenienced over the period, do you see what I mean?

MR WATSON-GANDY: My Lord, yes, indeed.

MR JUSTICE HILDYARD: And I quite appreciate the anxieties of the director in what appears to be a very, very cloudy situation, but this, this is a, this is a bit of a breathless application, is it not?

MR WATSON-GANDY: My Lord, it has been done at a certain, at a certain degree of pace and a certain, and I am afraid perhaps there would be, would be fuller and better evidence if, I am sure, from my learned friend's standpoint, if we, if it had been less of a rush.

MR JUSTICE HILDYARD: I mean, I think that---- My concern is that I can see good arguments in favour of an administration order, especially since no other insolvency process is in being, the floating charge holder is content, is that right----

MR RICHARDSON: Yes, my Lord.

MR JUSTICE HILDYARD: -- and there are reasonable prospects, it is thought, of a sale and there is a (inaudible) shares as I understand it by the proposed administrators, having looked at the matter. However, the, for the sake of good order, the, the exact position as regards the companies' inability to pay is a little cloudy. I am not sure whether it is accounting chaos caused by the intervention of the ICO or whether it is simply it has got no money -- I think needs to be tightened. I think the resolutions look a little bit rushed and I think that the position as regards the US companies is pretty frail at the moment. I will hear Mr Watson-Gandy, who has, who has, I know, formed a view on this, or at least the administrators are said to have formed a view, but, at the moment, I think COMI looks awkward. I am perfectly willing to be persuaded. If it is awkward then there may be other avenues. *Latreethers* might be one, secondary process might be another; I am not excluding anything, but this is, this is not a plain vanilla, is it? This has its complications.

MR RICHARDSON: Yes, my Lord. It is a claim that is far from ideal for all involved, including those instructing who are dealing with claims.

MR JUSTICE HILDYARD: And you have done a good job, I am not saying you have not. You probably were instructed very, very late. It is 2 May, everything happened, Mr Nix resigned apparently on 30 April. I dare say there has been a great deal of anxiety and chaos, and you have done well to provide a, a bundle and a bundle of authorities, none of which, I have to say, I have read, thought none is completely unfamiliar to me, but I wonder whether there is serious prejudice in my standing this matter over until tomorrow. If there is, you must say so.

MR RICHARDSON: My Lord, it would cause a number of complications with regard to employees who need to know their, their futures, so to speak.

MR JUSTICE HILDYARD: Have they been told then?

MR RICHARDSON: No, my Lord.

MR JUSTICE HILDYARD: Well----



MR RICHARDSON: They are waiting on the outcome of this application before they---- Obviously that will determine how----

MR JUSTICE HILDYARD: But have they been told of this application?

MR RICHARDSON: No, my Lord, I do not, I do not believe----

MR JUSTICE HILDYARD: Well, why are they awaiting it?

MR RICHARDSON: Because it----

MR JUSTICE HILDYARD: It is common knowledge, is it?

MR RICHARDSON: They are either going to---- Everyone knows that the company is for the wall, so to speak. It is how it gets dealt with from here on in. Now, if it could be sold and they could be retained, that would obviously put people's minds at rest, but that is, that is only prejudice I can think of on, on that basis.

MR JUSTICE HILDYARD: But do you think---- I can understand that prejudice, but do you think it will eventuate between now and tomorrow?

MR RICHARDSON: I, I cannot, I cannot possibly say, my Lord. I, I have been outside court all day, so I do not know the current situation.

MR JUSTICE HILDYARD: Is it something on which you could take some instructions on?

MR RICHARDSON: Quite possibly, my Lord, actually.

MR JUSTICE HILDYARD: Well, hold on a moment. Mr Watson-Gandy, do you want to urge against that?

MR WATSON-GANDY: My Lord, (inaudible) and a possible, a further possible way, way out, way forward to, to deal with the UK companies now and park the US companies, so we can take instructions on, on those, because that is really where the, where the complicating factor lies.

MR JUSTICE HILDYARD: So deal with them now, is that what you are saying?

MR WATSON-GANDY: Deal with the UK ones, the UK ones now and perhaps park the US----

MR JUSTICE HILDYARD: Park the, park the----

MR WATSON-GANDY: Because I can, I can see that, absent, absent further evidence, I, I, it, it may be a steeper hill to climb.

MR JUSTICE HILDYARD: What is your position, after all, although you can rely on the court order, but, nevertheless, you have to be satisfied that the internal processes were correct.

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: Are you content with these resolutions?

MR WATSON-GANDY: My Lord, given, given that the, Mr Wheatland has, is effectively the sole director in respect of most of the companies, we are, we are content with the, with the, with the resolutions.

MR JUSTICE HILDYARD: And the sale, do you think I could be told more about the sale of the SCL, was it SCL Investments?

MR RICHARDSON: SCL Insight, my Lord.

MR JUSTICE HILDYARD: Insight. I am so sorry. Yes.

MR RICHARDSON: I can take instructions on that matter, but all I was told was SCL was not to be included in my instructions as a result of sale, which then featured in Mr Wheatland's witness statement, as it was sold yesterday to Mr Oakes. I can find out further details for my Lord about that.

MR JUSTICE HILDYARD: Yes. Were you aware of that or----

MR WATSON-GANDY: I, I, I was aware that it had, it had come up out of the mix.

MR JUSTICE HILDYARD: But not bought by a director.

MR WATSON-GANDY: Not that it is bought by a director.

MR JUSTICE HILDYARD: Will you give me a second? Mr Lewison, I am sorry to call on you out of the blue, your matter, how long will it be?

MR LEWISON: I would hope no more than ten minutes, my Lord.

MR JUSTICE HILDYARD: Is it something you can tell me about or is it----

MR LEWISON: It is. It is. The documents have been emailed through to your Lordship's clerk.

The only pre-reading that I suggested was a 2½-page witness statement, but I can take your Lordship through that.

MR JUSTICE HILDYARD: Which area of country are we in?

MR LEWISON: It is an application to extend an administration. The administration ends today.

MR JUSTICE HILDYARD: I see. Well, that is rather urgent.

MR LEWISON: It is.

MR JUSTICE HILDYARD: And how long for?

MR LEWISON: For six weeks, my Lord.

MR JUSTICE HILDYARD: And that is, it is thought that is sufficient in order to accomplish the original purpose?

MR LEWISON: My Lord, yes. What has happened is that the administrators have filed the requisite notice to exit from administration to CVL. Companies House has come back today to say that the submission has been rejected due to a deficiency in the form that was

filed. What is sought is a very short extension to re-file the form and to allow Companies House to process it, thus exiting into a CVL.

MR JUSTICE HILDYARD: And are there identified criteria by reference to which I must exercise a discretion?

MR LEWISON: It is the discretion that is at large under para.76 of Sch.B1. The company is, is still insolvent, the administrator merely wants some time to tide the company over, otherwise it would exit from administration into nothing, with no management and no administrators appointed. By extending the administration, it furthers the interests of the creditors by allowing an orderly exit into CVL.

MR JUSTICE HILDYARD: And if an order is not granted today there is no post-validation, is there?

MR LEWISON: It, it would be open to the court, I think, to make a retrospective appointment pursuant to an administration application, but----

MR JUSTICE HILDYARD: But there would have be a fresh----

MR LEWISON: -- there would be formalities associated with that. Yes, it would be a fresh appointment.

MR JUSTICE HILDYARD: Very well. Well, what I am going to do, with the permission of counsel in front of me, in order for them to be able to take such instructions pursuant to my questions as they may think appropriate and available, is to stand that out for, until five o'clock, whereupon we will reconvene and, in the meantime, I will try and get hold of the relevant witness statement for Mr Lewison, then hear his application, since I think it would be a thousand pities if an extension which is warranted is not granted today, this being the witching hour.

MR LEWISON: My Lord, yes.

MR WATSON-GANDY: My Lord, from our side, we are content with that.

MR JUSTICE HILDYARD: So by, by all means, take your papers and melt away and I will deal with Mr Lewison's application, though I do need to read his witness statement. We will reconvene with you at five o'clock. I, I am not necessarily---- I want to think about whether I deal with it, the English companies first, but they are undoubtedly simpler than what I think is really quite a difficult one on the two United States (inaudible).

MR RICHARDSON: My Lord, just in brief, having heard from those instructing me, Mr Watson-Gandy's proposed approach is agreeable to the companies as well, and I take my Lord's point with regard to the information.

MR JUSTICE HILDYARD: And you have got quite a lot of employees over in the United States. If they see something happening in England, but not there, they might be concerned, but that is a matter which you will be better able to judge than me.

MR RICHARDSON: Yes, my Lord.

MR JUSTICE HILDYARD: Very well. Five o'clock.

(4.39 p.m.)

(A short adjournment)

(5.07 p.m.)

MR JUSTICE HILDYARD: Yes?

MR RICHARDSON: My Lord, I have spoken to Mr Wheatland in brief. He explained to me that the sale of the, SCL Insight was a share sale, as you enquired, and he is also amenable to having the American matter held over to, to determine, to derive better and further information. I also asked him with regards to the Information Commissioner's investigation. He says they have given him no indication with regard to returning of their property, though he did say he was hopeful that they might interface better with an administrator as he believes there is a personal vendetta against him, but I believe he would think that.

MR JUSTICE HILDYARD: (After a pause) Analytica---- I get slightly confused as to which company is which. The company called "Cambridge Analytica UK Limited", at p.14 of the exhibit----

MR RICHARDSON: Yes, my Lord?

MR JUSTICE HILDYARD: -- is that, which one is that?

MR RICHARDSON: That is a dormant UK company that was never used. I believe it was, whatever its purpose was when it was opened, it, it never obtained that purpose.

MR JUSTICE HILDYARD: So is that proposed to be administered?

MR RICHARDSON: Yes, my Lord.

MR JUSTICE HILDYARD: Though dormant?

MR RICHARDSON: As a dormant company, yes. Maybe, maybe it carries some goodwill associated with the brand.

MR JUSTICE HILDYARD: Is that the Cambridge which is---- Which is the Cambridge which is referred to Cambridge at para.75 of the witness statement?

MR RICHARDSON: I can tell you that. Bear with---- (After a pause) That is that Cambridge, my Lord.

MR JUSTICE HILDYARD: It is?

MR RICHARDSON: It is that Cambridge, yes, the UK Cambridge, I suppose would be the best differentiator.

MR JUSTICE HILDYARD: Sorry?

MR RICHARDSON: The---- Cambridge UK.

MR JUSTICE HILDYARD: And any other company called Cambridge is LLP, is it?

MR RICHARDSON: Yes, my Lord.

MR JUSTICE HILDYARD: And the, the potential purchasers are (inaudible) 98. They are someone who does not want to reveal themselves, but has apparently expressed an interest in part of the business, including staff. Is that part of the business, part of the UK companies' business, is it?

MR RICHARDSON: Yes, my Lord.

MR JUSTICE HILDYARD: Not the US companies?

MR RICHARDSON: I do not believe so, my Lord, no.

MR JUSTICE HILDYARD: It is rather vague.

MR RICHARDSON: It---- I am afraid it is rather vague. It is even more vague written down, but that was the information we could extract from those instructing me.

MR JUSTICE HILDYARD: And then there is Mr Nix himself has said he is interested in buying either the companies or the business and assets.

MR RICHARDSON: That is right, my Lord, yes.

MR JUSTICE HILDYARD: And it is really by reference to those two potential purchasers that the, it is hopes that the administration purposes would be achieved, is that right?

MR RICHARDSON: Not strictly, my Lord, no, it is simply to illustrate that they, they do have a value as a going concern, but there is a great many other advantages to the administration, such as the realisation of the intellectual property and the goodwill.

MR JUSTICE HILDYARD: But would that not have depended on seeing whether people want to buy the whole lot, otherwise you might----

MR RICHARDSON: It is a possibility, my Lord. I mean, it could be administered in a great many ways, but it is just as an example of the fact that they have value even before going into administration, and interest before they have been put open to the free market.

MR JUSTICE HILDYARD: So they what?

MR RICHARDSON: They are shown to have a market value before even being open to a wider set of consumers.

MR JUSTICE HILDYARD: Yes. Thank you.

MR RICHARDSON: Thank you, my Lord.

MR JUSTICE HILDYARD: Mr Watson-Gandy, do you want add anything?

MR WATSON-GANDY: My Lord, only to, only to stress that our position has always been, is, is on those sorts of pessimistic bases, in terms, in terms of outcome, because we do not, we do not know what would be realised because it has not had a chance to, to expose it, to expose it to the market. The reason we have taken that stance is because there still needs to be a degree of digging done as regards the financial position of the company. So, essentially, what we have, from the administrator's stance, we have done is assume the worst, so anything that could be gained from a sale or from the sale of assets, or from the realisation of debts, or from the, from the sale of IPRs would be a bonus.

MR JUSTICE HILDYARD: But on the worst basis there is not much to choose between liquidation and administration?

MR WATSON-GANDY: My, my, my Lord, yes. My Lord, yes. As---- If, if nothing could be, if nothing more than we know can be relied on, there is no, there is no, there is no, not much different between, between either option. There is a tiny, one company there is a tiny difference, but not, not as much----

MR JUSTICE HILDYARD: Tiny difference in favour of administration?

MR WATSON-GANDY: Yes, but not, not enough to actually, or to, not enough to be considered significant, one way or the other.

MR JUSTICE HILDYARD: So the results are likely to be the same. Would not the fees for liquidation be fewer?

MR WATSON-GANDY: Marginally, marginally, yes, but the recovery, but not, not, again, not as much as to make a great deal of difference.

MR JUSTICE HILDYARD: But on that footing, and on the basis on which you are proceeding, it would be better for creditors to wind up?

MR WATSON-GANDY: If, if, if there was nothing, there was nothing realised, if there was no value in the, in, in, in the, in the company, none of the debts could be, could be recovered, if the business could not be sold, our view is that it would probably be, make no difference one way or the other, but if there could be a prospect of asset, asset sales or values realised, then we would, then we would consider administration would be a better course. It is, it is, it is simply that we did not want to put forward a position before the court which we could not

back by, back by evidence. There are lots of hopeful---- There are lots of matters which give us hope and that is why we would support, why we would support an administration as the process.

MR JUSTICE HILDYARD: But if you cannot be certain, how can I be? If you cannot say that it is more likely, that there is a reasonable likelihood, how can I say that?

MR WATSON-GANDY: Well, my Lord, my Lord, we have said that we, we think there is a reasonable, reasonable likelihood. What we cannot do at the present point of time, in the absence of the, absence of the accounts, is to give firm figures.

MR JUSTICE HILDYARD: Let me---- I thought you were saying that the reasonable likelihood is that if everything turns out right, everything will turn out right.

MR WATSON-GANDY: No. If everything turns out badly then there will not be much difference between the position, the, the two positions. If, if, if one of the factors turns out well then we, then, then there is a benefit in----

MR JUSTICE HILDYARD: What is the best point for thinking that there is a reasonable likelihood that, despite the lesser expenses of a liquidation, administration would offer more for other creditors?

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: What, what is the best point?

MR WATSON-GANDY: The best point is that there is already interest in, in, in, in the sales of, of business and assets.

MR JUSTICE HILDYARD: From Mr Nix?

MR WATSON-GANDY: Yes, indeed. There is, there is also certain assets that we think probably could be pursued.

MR JUSTICE HILDYARD: Is there any problem in that the moratorium would be available, the companies would be insulated and the person who resigns, Mr Nix, would come in and take over the businesses? Is there any problem with that sort of slightly cosy arrangement?

MR WATSON-GANDY: My Lord, our, our wish would be to expose it to the, to expose it to the market, because it is only on that basis we would be able to have a, have a proper assessment of the, of the, of the offers that are on the table. It---- Whilst, whilst there are, whilst there are, whilst there are, there are people connected with the business who are interested, it, in the absence of the, the books and records of the company, of the company, we do not, we cannot be, be assured that we are getting the best price for the, for the, the business and assets, and the only protection we can, we can afford ourselves, absent the recovery of the, of the, the books and records from the, from the ICO, is to expose it to the

market, because then we can say to ourselves, “Yes, we have exposed it to the market, we know, we know what interest there is in the market”, and that will----

MR JUSTICE HILDYARD: The market will say, “We cannot tell until we have got the books and records.”

MR WATSON-GANDY: Well, there is----

MR JUSTICE HILDYARD: “We cannot do any due diligence or offer any serious amounts until we know what we are buying.”

MR WATSON-GANDY: Well, we would be selling the, we would be selling the business and assets. It is a well-known, it is a well-known market, market name, even if one that has attracted a certain notoriety at the moment.

MR JUSTICE HILDYARD: What, so you think there might be punters out there who do not really care what, what the financial position is, the name is enough?

MR WATSON-GANDY: Well, in terms of the, in terms of what they would be buying is a work in progress, what they would be buying is a client, is a client, is a client base.

MR JUSTICE HILDYARD: But nothing---- I thought you said you cannot really tell that because all these books and records are in the hands of the ICO.

MR WATSON-GANDY: My, my Lord, what we can see is that there is, there is a history of, of which the companies, the group has been a very successful player in the market.

MR JUSTICE HILDYARD: But the basis of the administration is it has been ruined by the adverse publicity and its, its goodwill has been trashed and no clients want to deal with it. They are not going to, they are not going to want to pay your invoices or the companies’ invoices, if they are saying, they are screaming they want their deposits back, that does not seem to be consistent with a notion of the sale of the goodwill.

MR WATSON-GANDY: Well, my Lord, my Lord, what, what, what has, what has value and has value in terms of connections is if the work in progress was taken over by another company which does not, which is not tainted by those, that process, then the customers would have no such complaint as regards the completion of their, of their, of the projects that have been undertaken, if it is taken over by a competitor, and the competitor would simply say, “Well, we, we do not have the, the baggage that Cambridge Analytica has, we have provided them with a service and in those circumstances, pay us our bills and let us complete the contract.”

MR JUSTICE HILDYARD: It is a pig in a poke.

MR WATSON-GANDY: Well----



MR JUSTICE HILDYARD: As far as can be told at the moment. It will become clearer when, if and when the ICO delivers back the books and records but, at the moment, it is a pig in a poke.

MR WATSON-GANDY: My Lord, often, often in, when you are, when you are selling assets in an insolvency situation, you sell, effectively, a cat, a cat in a bag and there is a, there is a, that is reflected in the, in the, in the price you achieve.

MR JUSTICE HILDYARD: I am surprised about that, but that is, that is----

MR WATSON-GANDY: You do not, you do not, you do not give the warranties that you would normally expect----

MR JUSTICE HILDYARD: No. I dare say----

MR WATSON-GANDY: I think that is what I was trying to drive at.

MR JUSTICE HILDYARD: -- that they would be inclined to have a look to see what they are buying, I should imagine.

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: And the only way they could tell that, being a company, is either there are physical things, which, in this case, there are not, because it is a service company, or there are available records to show what they are buying.

MR WATSON-GANDY: My Lord----

MR JUSTICE HILDYARD: They may, they may be imperfect, but there is something, whereas you are saying there is nothing.

MR WATSON-GANDY: My Lord, our hope is to recover data and materials from the, from the ICO. I cannot imagine that the, that a, a court officer like the administrator would have the same difficulties that a director might have, and, and one can see that the ICO may be reluctant to hand data back to the directors, but we can access that, that, that information without the concerns that the ICO would, would have, because we are effectively----

MR JUSTICE HILDYARD: You are professional people, insolvency practitioners----

MR WATSON-GANDY: We are professional people.

MR JUSTICE HILDYARD: -- with no previous contact with the companies.

MR WATSON-GANDY: My Lord, no.

MR JUSTICE HILDYARD: And entirely independent.

MR WATSON-GANDY: My Lord, yes. And if we, if we do something wrong we will be subject to the jurisdiction of the court.

MR JUSTICE HILDYARD: Yes. I cannot remember that the administrators are officers, but, in any event, they will owe duties.

MR WATSON-GANDY: Yes, my Lord. They, they---- And, we, we, we are under duties to, to act, to act properly and we can be disciplined by professional bodies as well as by the court.

MR JUSTICE HILDYARD: Yes. Are they officers? I cannot remember.

MR WATSON-GANDY: My Lord, I think they are because they are insolvency practitioners.

MR JUSTICE HILDYARD: As such, yes. And in the references to the businesses, any pause for thought as to whether, in reality – and I do not blame anyone because I can, I am beginning to understand the difficulties in getting full instructions in this matter – that, so far as the business is concerned, are you able neatly to split the English from the American, or is the, is the truth that so much of the business is conducted in America that, without the American administrations, the, the goalposts are fundamentally altered?

MR WATSON-GANDY: My Lord, if, if we, if the insolvency process does not start here, it will start in the United States. That is the---- That is, that is---- It is just a matter of we need a---- It is just a matter of process, so if we do not succeed on COMI then an application will be made in the, in the States. That is if----

MR JUSTICE HILDYARD: Will you (inaudible) Chapter 11 there?

MR WATSON-GANDY: My Lord, yes. Whatever happens, the, the group needs to be, needs to be wound up and, but if there is a, if, if it would be dealt with in the States there would be an insolvency practitioner dealing with it there, and no doubt we would liaise with them.

MR JUSTICE HILDYARD: Well, you, you, inadvertently, possibly, (inaudible) on what the alternatives are, including, simply winding the companies up, which are available. You cannot withdraw an administration application, can you?

MR WATSON-GANDY: My Lord, I would---- How do you mean?

MR JUSTICE HILDYARD: Can you withdraw an administration application without permission of the court?

MR WATSON-GANDY: It is---- I am trying to think how analogous it is to a, to a---- Because you cannot do that with a, you cannot do that with a, with a winding up petition, that is right. I am just trying to think whether you could do that with a application for permission to, to----

MR JUSTICE HILDYARD: Is it 12(3)?

MR WATSON-GANDY: 12(3), my Lord.

MR JUSTICE HILDYARD: (inaudible) consequences in respect of another matter you are involved in.

MR WATSON-GANDY: My Lord, yes. My Lord, your Lordship is right, 12(3): an administration application may not be withdrawn without the permission of the court. My Lord, so it is----

But, at the end of the, at the end of the day, in relation to this matter, it is not my application, it is my learned friend's.

MR JUSTICE HILDYARD: It is, indeed. I am confusing the two of you, but I am regarding you, I do not mean this rudely, as a slight tag-team in this regard. I know you are independent, but, nevertheless, it is, it is a matter which comes on with the support of you both, if I can put it like that.

MR WATSON-GANDY: My Lord, yes. There are, there are two tiny points of difference between us, but as regards the substance----

MR JUSTICE HILDYARD: What are those?

MR WATSON-GANDY: My Lord, we would like a change to, a tweak to the order.

MR JUSTICE HILDYARD: Which is? The joint?

MR WATSON-GANDY: The joint. And I think one of the references----

MR JUSTICE HILDYARD: What, you want to only act jointly or you want to be able to act separately?

MR WATSON-GANDY: We said, we said each of our administrators can act in their, in their (inaudible)----

MR JUSTICE HILDYARD: They are both senior insolvency practitioners.

MR WATSON-GANDY: It is not an unusual type of request, but it just----

MR JUSTICE HILDYARD: And what is the other one?

MR WATSON-GANDY: It is---- There is reference in the, in one of the, in part of the evidence, para.101, to the estimated outcome statements reflecting the sale. They do not, they expressly exclude that.

MR JUSTICE HILDYARD: Yes, sorry. Got me there. What is, what is that?

MR WATSON-GANDY: Yes. It---- The paragraph, I think it omits---- I suspect my learned friend might say it omits a lot.

MR RICHARDSON: That is correct, yes, I have----

MR WATSON-GANDY: Then those, then that point falls away.

MR RICHARDSON: As done in haste.

MR WATSON-GANDY: Ah.

MR JUSTICE HILDYARD: Because?

MR WATSON-GANDY: It omits, it omits a lot. Our reading, our understanding was that the---- Our reading of that was that the, that it, the, our estimated outcomes statement did include the offers made. The answer is it does not include, in fact. In fact, my learned friend is, just pointed out, it is just a typo.

MR JUSTICE HILDYARD: I see. I see. Are you able to help me, or is it not really in your (inaudible) as to the process in terms of employees if I stand this over until tomorrow?

MR WATSON-GANDY: My Lord, I, obviously we would be keen to, to get something to, to get it underway as quickly as possible, but it is a matter for my learned friend really as to, as to the real implications. We would like to---- From our standpoint, our, our primary interest is the, is the UK, because that, that is, that is our, that can be dealt with immediately.

MR JUSTICE HILDYARD: How many employees are there in the UK?

MR RICHARDSON: Sixty-three, my Lord.

MR JUSTICE HILDYARD: Sixty-three. And they are employed by?

MR RICHARDSON: SCL Elections Limited, my Lord.

MR JUSTICE HILDYARD: SCL?

MR RICHARDSON: Elections Limited, my Lord.

MR JUSTICE HILDYARD: How was the Barclays charge discharged? It was, there was---- I was having a quick look at the correspondence, email exchanges, there was a hurry about that and you hurried them on and it was discharged. Was that outside monies?

MR RICHARDSON: I am not sure how it was paid, my Lord, but it was paid. I think possibly, historically and the charge had not been seeked (sic) to be removed is, is the feeling I get, but I cannot give you anything definitive on how that process worked.

MR JUSTICE HILDYARD: It is just I wondered how, if it was paid by the company, how it could get its hands on the money if it cannot for anybody else.

MR RICHARDSON: That is why I believe it to be prior to this situation we find ourselves in.

MR JUSTICE HILDYARD: What is that?

MR RICHARDSON: That is why I believe it to be prior to this situation. That is why I think it has been paid historically.

MR JUSTICE HILDYARD: I think it was paid the day before yesterday, was it not?

MR RICHARDSON: I think they asked for the charge to be removed, but I believe that the balance was settled some time ago.

MR JUSTICE HILDYARD: Oh, was it?

MR RICHARDSON: That is my understanding, my Lord.

MR JUSTICE HILDYARD: Right. I see. So it is just they had hung to it, had they?

MR RICHARDSON: I do not believe anyone had taken the matter in hand.

MR JUSTICE HILDYARD: What I was looking at was p.75. Maybe I have got the wrong end of the stick. It says, "I would like to confirm I have actioned an urgent report into my credit

team tonight to discharge any security that Barclays are holding against the group companies”, and then there is a bit of to-ing and fro-ing about the urgency of the matter.

MR RICHARDSON: On my understanding, my Lord, I just think it was someone that was chasing up something that needed to be done quite some time ago in fact, but it is our---- The urgency of course is it is now apparent to, to the parent company, in chasing this up, but it is something that should have been done before is how I get the impression of it.

MR JUSTICE HILDYARD: But, but no money was necessary, it was simply an administerial act, is that right?

MR RICHARDSON: Yes, my Lord.

MR JUSTICE HILDYARD: You are sure about that?

MR RICHARDSON: From the correspondence, it is indicative of that, and that is my understanding such that I have been given.

MR JUSTICE HILDYARD: Remind me of the urgency in this respect, apart from those correspondence?

MR RICHARDSON: That, those correspondence is the only thing we have, my Lord.

MR JUSTICE HILDYARD: Where is it introduced in the evidence? 102? That gives the impression that they were creditors.

MR RICHARDSON: I do not believe that they---- They were not owed money, it is just a question of when that was settled, and, and, clearly, had that been settled at that time there would have been some more comprehensive correspondence either detailing they had received their funds, or something similar to that regard, but simply just saying, “We have looked into this and we will remove the charge” is indicative of the fact that----

MR JUSTICE HILDYARD: I just do not know what the prequel was.

MR RICHARDSON: I am afraid neither do I, my Lord, but my feeling is as stated.

MR JUSTICE HILDYARD: Is this something you would be able to check?

MR RICHARDSON: Yes, my Lord. Those instructing me are checking now.

MR JUSTICE HILDYARD: Thank you. This goes to a point which I had asked you about, and which you had answered and, therefore, it is entirely my fault, as to what the employees know or have gathered or what you fear they may have presumed, against the prejudice point.

MR RICHARDSON: My understanding is such that not a lot of things are happening and there is a lot of people waiting to find out what is going to happen to the company. There is a widespread view that the company is obviously in a lot of trouble and I imagine those employees want to know whether they are going to get paid this month and what, how that

is going to happen, whether their employment will persist or, or whether the company will need to be wound up or liquidated or put into administration, but I, I am keenly aware that, given the press surrounding this, and possibly the change in routine for those employees, that this is a matter that they will be keenly aware of.

MR JUSTICE HILDYARD: There is a lot of speculation as to----

MR RICHARDSON: There is a lot of speculation there, my Lord, but I am afraid I am not involved in, in day to day management of the, the employees. It has been stated that the employees are a concern, but that is as far as I, I have that, that statement.

MR JUSTICE HILDYARD: Are you able to tell me whether there are immediate pressures on payment to employees, i.e. amounts outstanding for the last month (inaudible) or anything like that?

MR RICHARDSON: I am sorry, my Lord, I just do not know. I can, I can get instructions if, if required. (After a pause) Sorry, my Lord, I have misled you. I said there were sixty-three employees; there are actually sixty-one.

MR JUSTICE HILDYARD: Thank you. (After a pause) Do excuse me. (After a pause) I have two other questions. One goes back - and, again, I have travelled over this before - to the resolutions. Curiously, Mr Wheatland is not appointed until the meeting in the case at least of Cambridge Analytica UK, as the defunct one, almost defunct one, or SCL Analytica, then Mr Nix resigns. Was Mr Nix at these meetings?

MR RICHARDSON: I do not think so, my Lord.

MR JUSTICE HILDYARD: So how, before Mr Wheatland was appointed, could they be constituted?

MR RICHARDSON: I, again, my Lord, I have got to say I have not checked the articles on this matter. I have taken at face value that these were valid meetings, bearing the signature of a director. Mr Nix has, I know, been notoriously uncooperative, but there must be provisions should, should a company not be left directorless should the only director resign.

MR JUSTICE HILDYARD: Well, it is difficult to see how these meetings really sort of happened because, at the time that they were commenced it appears that Mr Wheatland was not a director. He then becomes a director. Until he becomes a director, the only director is Mr Nix, and he was not there.

MR RICHARDSON: That is right, my Lord. In some circumstances, not all.

MR JUSTICE HILDYARD: Sorry?

MR RICHARDSON: In some circumstances, not all. Of course, there were other directors of other companies, but yes.

MR JUSTICE HILDYARD: Oh, in one other circumstance, you are right. It is only (inaudible) circumstance, the purchaser----

MR RICHARDSON: A Mr Oakes, that is right, in, in, with regard to the SCL Group Limited.

MR JUSTICE HILDYARD: That is right. Quite right, Mr Oakes was there, and he, he is marked as in attendance and it is signed by Mr Wheatland, so I must take that to be the fact.

MR RICHARDSON: That is right, my Lord, p.4.

MR JUSTICE HILDYARD: Yes. Well, it comes down to this, does it not, and I would like both of your inputs on this: there are three points of real concern, one of which does not arise if you, for the present, abandon your position with respect to the US companies. Of the others, first, the resolutions which I am invited to proceed on are almost certainly technically defective and so the authority of the directors to make the application appears uncertain. I do not know quite how it all clicks into place. If you think I am wrong about that, that is for you to explain to me. Then, and the big question under the administration process is, given that the proposed administrators cannot really say that a sale is anything other than a hope, how can I be satisfied that there is a reasonable likelihood of the purpose of the administration being achieved, given that, unless a sale is achieved, it appears that liquidation may be the better route. Is that not what it comes down to? Is that not what our discussions have reduced it to?

MR RICHARDSON: Well, with regard to the second point, my Lord----

MR JUSTICE HILDYARD: Yes?

MR RICHARDSON: -- this is not, obviously, a run of the mill circumstance. There has been a regulatory body in the UK that has seized important financial information. I do not really know where to look for precedent on how to deal with something like that, but it is clear that if it that is returned the company would obviously be in a much more favourable position than it is currently, and an administrator is more likely to, to be able to effect, effect that than in any other scenario, as----

MR JUSTICE HILDYARD: Than a liquidator?

MR RICHARDSON: Well, as discussed, an opportunity to would be missed then if, if administration was the better route but was forced into liquidation by that seizure.

MR JUSTICE HILDYARD: Is there a reasonable likelihood---- What can I---- What is your---- What can I really fasten on as putting me over the, the, the hurdle? I cannot exercise the discretion unless I am satisfied of that, if I am satisfied (inaudible) discretionary, that is my understanding.

MR RICHARDSON: I can only re-state the, the goodwill of the company, the intellectual property, actually mobilised with the people who know how to use it, namely the employees, the works in progress, the money on account that will not have to be returned to clients, provided they are, they are happy to proceed on the, on the basis they contracted on to start with. These are large sums that are owed as well, by the clients that refuse to pay as a result of the business ceasing trading or them believing the business was about to cease trading. Should it go into administration, they may have restored hope and continue to pay that that they contracted for and get their business at the end of it. That would be my submission to you, my Lord, that those are monies that have already been promised.

MR JUSTICE HILDYARD: Okay. Well, I have tortured you enough. Mr Watson-Gandy, are you bothered about these, the point I raised about the resolutions?

MR WATSON-GANDY: My Lord, I think the thing that may rescue it is the fact that there was reference given to, in, in what, in the rubric at the start, that notice of the meeting had been given to all those persons entitled to see the same, and so the, so the opportunity for Mr Nix to attend and have his say----

MR JUSTICE HILDYARD: You cannot have a meeting with nobody there, it is not a meeting.

MR WATSON-GANDY: My Lord, yes, save, save, save that Mr, the first big point, point of business is----

MR JUSTICE HILDYARD: Is what?

MR WATSON-GANDY: -- Mr Wheatland being appointed as a director and then Mr---- Your Lordship---- I see where your Lordship is going.

MR JUSTICE HILDYARD: But he was not there. Who appointed him? Mr Wheatland was not a director. Who effected the appointment?

MR WATSON-GANDY: Well, I see that. My Lord, I see, I see what your Lordship, your Lordship's, your Lordship's point. As regards the----

MR JUSTICE HILDYARD: I mean, maybe you can---- The, the holding company, if it holds 100 per cent of the shares, may be able to appoint, but do I not have to be assured that the application is made by directors duly authorised and acting *de jure*?

MR WATSON-GANDY: My Lord, I, I can see, see your Lordship, your Lordship's point in that regard.

MR JUSTICE HILDYARD: Yes.

MR WATSON-GANDY: As regards the second, as regards the second hurdle, there is, there is perhaps a benefit which I, I had not addressed you on, and relates to the work in progress.

MR JUSTICE HILDYARD: Yes.



MR WATSON-GANDY: On a liquidation, that would be, that would be lost.

MR JUSTICE HILDYARD: Yes.

MR WATSON-GANDY: At the present point in time, what we, what we---- An administration allows us to at least complete the, the work in progress so we then have a, then we have something to claim from the, from our, from our clients. My Lord, that is, that is, that is, that---- Your Lordship asked me for concrete, concrete matters and that is at least one concrete matter.

MR JUSTICE HILDYARD: So that is likely to be a plus.

MR WATSON-GANDY: That is, that is, that is a definite plus. My Lord, as regards the, what I have to satisfy, what my learned friend has to satisfy, just the person making the application, as regards the, the burden that has to be satisfied, it is not, it is not a high burden, certainly the authorities would suggest----

MR JUSTICE HILDYARD: It is what it is: it is reasonable likelihood.

MR WATSON-GANDY: Yes. The, the other, the other matter is that, as regards, as regards the, the likelihood, my, my clients, I think, are, the expressions given as regards that is that it is not fanciful that an offer be made. What we, what we have is a situation where, in short order, there has already been one sale. There are two expressions of interest and that is even before the matter has been exposed, exposed to the market. The, the reason, the reason we, we have not pursued this, pursued this further is because we do not, we certainly do not want to be put in a pre-pack situation where, until we have got a proper sense as to the value of what is being sold----

MR JUSTICE HILDYARD: You want to explore?

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: And it is not impossible that when you get, if you get the information back, you will be in a much better position.

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: You just do not know. What I am going to do, and with apologies for bringing you back, is I really must have some basis for knowing that this is an application made by *de jure* directors.

MR WATSON-GANDY: My Lord, yes.

MR JUSTICE HILDYARD: Having spotted it, I really not think I have got any basis. It is a moment of nullity, it can be ratified, anything can be done, provided there are directors. We have not seen the Articles of Association in respect of the companies. Normally, a company is bound by a matter via the unanimous consent of its shareholders in accordance with

(inaudible), and it may be that a written appointment by the shareholders will do, and can ratify that all this has occurred. That is purely procedural, but I think, having spotted it, with apologies, I simply cannot treat as before me a matter which has not properly (inaudible) as best I can tell, because it seems impossible from what I am told.

I am quite clear that the matter must be put into the hands of independent parties, since, otherwise, there seems to be no progress to be had, given the state of unease between the, the regulator, as I will call him - is it the ICO, the ICO - and, and the companies, so it is plainly right that some process should be introduced. I will hear it not before 10.30 tomorrow. I have to deliver judgment on another matter at 10.15. It should be over by then. I have got another few matters in the list. So far as any enquiries are concerned, then, as I understand it, there is no one in court who is otherwise and intimately connected and would not wish to talk about the matter whilst it is pending before me, and if there are enquiries, you can say that the court was considering late-filed papers overnight and is, the matter continues tomorrow.

MR WATSON-GANDY: My Lord, I am grateful.

MR JUSTICE HILDYARD: So it is simply adjourned for those purposes. But you must, you must, please, and this is really for you, Mr Richardson, and your solicitors, who I know, I do not know in the slightest bit I can perceive a great deal of difficulty in this, you must try and get some bit of paper which just demonstrates that the moving thought of Mr Wheat---- Oh dear, I am going mad. What is he called, Mr----

MR RICHARDSON: Wheatland, my Lord.

MR JUSTICE HILDYARD: -- Wheatland is a director and that his acts were either valid at the time or have been ratified since.

MR RICHARDSON: I am grateful.

MR JUSTICE HILDYARD: And any information in the meantime that you can get on the American companies which you think would help, of course I will not shut you out from restoring your application with respect to them, but, even taking account of the fact that it is only one o'clock in America, that may be difficult. Thank you very much. So not before 10.30. I will not have it listed, it is just to return. All right? Thank you very much.

(5.51 p.m.)

(Adjourned until the following day)

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